Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1976

No. 76-178

REV. SHARON L. SCARRELLA, REV. RICHARD W. BULLOCK and ALBERT BRISSON, and all others similarly situated,

Appellants,

vs.

MIDWEST FEDERAL SAVINGS AND LOAN ASSOCIATION OF MINNEAPOLIS, R.E. VAN HORN, as an individual, K.G. BOOTH, as an individual, and their agents, assigns successors, representatives, those acting in concert with them, and all others similarly situated.

Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE

Rev. Sharon L. Scarrella
Attorney Pro Se
Appellant - Petitioner
1058 Summit Avenue
St. Paul, Minnesota, 55105
(612) 225-2861

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Appellants,

vs.

MIDWEST FEDERAL SAVINGS AND LOAN ASSOCIATION OF MINNEAPOLIS, R.E. VAN HORN, as an individual, K.G. BOOTH, as an individual, and their agents, assigns successors, representatives, those acting in concert with them, and all others similarly situated.

Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners, citizens of the State of Minnesota, Rev. Sharon L. Scarrella, Rev. Richard W. Bullock and Albert Brisson, pray that a Writ of Certiorari be issued to review the opinion and judgment of the United States Court of Appeals for the Eighth Circuit which was entered in this proceedings on June 8, 1976.

OPINIONS BELOW

The opinion and order of the United States District Court for the State of Minnesota, Fourth Division, entered on November 21, 1975, is reproduced in the Appendix. The opinion and judgment of the United States Court of Appeals for the Eighth Circuit entered on June 8,1976 is reproduced in the appendix to this petition.

JURISDICTION

The judgment of the Court below (see appendix) was entered on June 8, 1976. Affidavits of Prejudice were filed by Rev. Scarrella and Rev. Bullock on November 8, 1975, against the judges of the Eighth Circuit Court of Appeals. Rev. Bullock and Mr. Brisson were never served with an order or Judgment from the Eighth Circuit Court of Appeals. The jurisdiction of this Court is invoked under Title 28 of the United States Code Section 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

This is an appeal by Rev. Sharon L. Scarrella, Rev. Richard W. Bullock and Albert Brisson from a Order and Judgment of the U.S.C.A. for the Eighth Circuit affirming an order by Judge Earl R. Larson dismissing two (2) parties and hereby the class action, and ordering an amended complaint, when in fact an Affidavit of Prejudice against Judge Larson had been incorporated in the complaint and also timely served upon him, and the questionable method in which he (Judge Larson) brought the case on for trial might intimate a personal interest in

the case and/or against the plaintiffs. The attempt by the defendant to deprive Rev. Scarrella of her homestead by state law and the refusal of the state court to determine the constitutionality of a state statute, during the immediate action. The issue of this action as to whether the lender can arbitrarily refuse to accept mortgage payments which are covered under the Truth-in-Lending Act, when a borrower chooses to purchase the risk insurance for the real estate with a company other than affiliated with the lender and also when the borrower elects to pre-pay the real estate tax, rather than allow the lender to accumulate these funds(insurance & taxes) in escrow accounts which allow the lender to have use of these funds for investing and re-investing, while failing to pay interest on these funds, thereby, unjustly enriching themselves at the expense of the members of the class. To determine the constitutionality of M.S. 580.06 which allows an adminstrative officer (a sheriff) to conduct a foreclosure sale of real estate when he cannot force a lawyer to furnish a verified itemized statement of the redemption amount as required by M.S. 580.04 and M.S. 580.09.

QUESTIONS

1. Can a U.S. District Judge hear a case, when a statement of bias and prejudice (p.28(A)Appendix), is incorporated in paragraph 9 of the complaint?

2. Can a District Judge with-hold the information as to who will be hearing a case until thirty (30) minutes before thestart of the hearing?

3. Can a District Judge engage in subterfuge purporting to have a hearing without having a record made?

4. Can a defendant refuse to accept mortgage payments(P&I) and then proceed under state law for foreclousure while the action is pending in the federal court?

5. Can a State Court refuse to assume jurisdiction of a mortgage foreclosure proceeding to require the lender to set out the full redemption figure?

6. Can a State Court refuse to enforce state law requiring the lender to furnish a verified itemized statement of the redemption price as set forth in M.S. 580.04 and 580.09?

7. Can a State Court refuse to determine the Constitutionality of a state law, thereby becoming a party to an effort by defendant's lawyers to steal and illegally take plaintiff Rev. Scarrella's homestead?

8. Can a lender under the Truth-In Lending Act refuse to accept mortgage payments (P&I) because the borrower chooses to purchase her insurance with a company other than the one affilated with the lender?

9. Can a Lender charge insurance payments against a borrower even though the borrower has prepaid insurance with another company?

10. Can a Lender refuse to accept mortgage payments (P&I) from a borrower when the borrower has elected to prepay the real estate taxes?

11. Can a Lender refuse to accept mortgage payments (P&I) because borrower elects not to pay into escrow accounts which permit Lender to unjustly enrich themselves with interest payments on those funds.

12. Can the Lending institutions engage in practices which allow them to unjustly enrich themselves at the expense of the average citizens and home owners of the State of Minnesota?

13. Does the equal treatment and due process clauses of the 14th Amendment extend to citizens of Minnesota with respect to the citizen-lawyer relationship?

14. Can a State Court practice discrimination based upon custom and usage in the mis-treatment of citizens property rights?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

That this case, arising under the Constitution of the United States, the laws of the United States, Magna Charta and the Constitution and laws of Minnesota. Title 28 U.S. Code Sections 1331, 1343, 1344, 1441 (a), (b), and (c) 1443 (1)&(2), 2201, 2202, 2281-2284, and relief authorized by 42 U.S. Code Section 1981 through 1995. 15 U. S. Code Sections 1 through 28, commonly known as the Sherman Anti-Trust Act and the Clayton Anti-Trust Act, 15 U.S.C. 1601-through 1681, Rule 23., and the Fourteenth Amendment of the Federal Constitution, and M.S. 580.04,580.06,580.09.

STATEMENT OF CASE

On May 31, 1973, Plaintiff, Rev. Sharon L. Scarrella, purchased her homestead at 1058 Summit Avenue, St. Paul, Minnesota, 55105, and entered into a mortgage agreement with the Defendant Midwest Federal Savings and Loan Association of Minneapolis, Minnesota,(hereafter Midwest Federal), as the Mortgagee pursuant to Regulation "Z" of the Federal Reserve Board under the Truth-In-Lending Act, 15 U.S.C. § 1601 et seq. This contract requires that Rev. Scarrellas monthly payment would be Two Hundred Thirty-Two and 65/100 Dollars. ($232.65) principal and interest for 25 years. Since Rev. Sharon L. Scarrella was an unmarried woman she was req-uired to have an employed male as co-signer on this contract. The provisions of Regulation "Z" allow Rev. Scarrella to purchase insurance with any company she wishes and not necessarily with the mortgage company's insurance affiliate. Rev. Scarrella chose to exercise this option and did obtain insurance with another company.

Rev. Scarrella purchased her homestead for approximately $39,500.00, and made a down payment of approximately $9,000.00, which left a balance of $30,500.00, which was financed by a mortgage from the lender-defendant, Midwest Federal. The other defendants are officers and/or employees of Midwest Federal who willfully joined in the harassment of Rev. Scarrella and others directly involved because of their association with defendant Midwest Federal.

Timely and regular monthly payments were made according to the mortgage agreement from June 30, 1973 to May 30, 1975. At this time it was suspected that the lender was actually charging her for insurance with their affilate company. Lender's statement of disclosure was not in compliance with the requirements of the Truth in Lending Act and Regulation "Z", where the figures and their placement and relation to one another were not "in meaningful sequence," where basic arithmetical and subtractional columns were not used but, instead, the mind and the eye had to jump from one section of the statement to another, and where the lack of any meaningful sequence to the purported disclosures effectively masked any information which the Act sought to have available to the consumer. Truth in Lending Act,§130, 15 U.S. C.A. §§1640; Truth in Lending Regulations, Regulation "Z", §§226.6. Allen v. Beneficial Finance Company, 393F.Supp..1382, (1975).

Consequently, Rev. Scarrella decided to purchase her insurance separately and pre-pay her real estate taxes separately and furnished proof thereof to the lender, thereby paying only the contracted amount of principal and interest payment of $232.65. The lender losing the insurance business which is actually owned and operated by one of the members of the board of directors of Midwest Federal; thereby absolutely refused to accept any payments whatsoever, unless they included the escrow payments for insurance and taxes.

Payments were made on July 1, 1975, of the balance due of $141.35, to the defendant Midwest Federal for the June 30th, 1975, loan payment and received a receipt. Later the defendant returned the check uncancelled. On July 30th 1975, $232.63 payment was tendered and a received receipt was given, Later that check was returned. On August 12, I975, $232.65, payment was tendered for the August 30th payment, and a receipt was received. Later that check was returned. On August 21, 1975, she paid $232.65, to defendant Midwest Federal, for the September 30th payment and received a completed receipt. Later that check was also returned. On August 22, 1975, she paid $232.65, to one of the Midwest Federals office for the October 30th payment and received a receipt. Later that check was also returned.

On October 17, 1975, a cashier check issued from Minnesota Federal S&L, no. 151 23523, was tendered to the Defendant, Midwest Federal, in the amount of $1,072. 60, remitter, Bernice A. Peterson, co-owner of the mortgage in question, for the principal and interest loan payments for the months of June, July, August, September, and October 30th, 1975, refused payments, and which apparantly was held by Defendant and/or their lawyer, Rollin F. West; this payment, also has been refused by the Mortgagee, without just cause or reason, and to date there has been no default by appellant-mortgagor.

On September 4, 1975, Rev. Scarrella purchased insurance by paying the yearly premium in advance for a policy with Tower Insurance Co., of Milwaukee Wisconsin, 53233, in the amount of $341.28 and she

furnished notice and request for rebate to the defendant Midwest Federal.

On September 11, 1975, Rev. Scarrella timely paid the real estate taxes on her homestead in the amount of $439.95, 2nd half and furnished notice to the defendant Midwest Federal.

While refusing to accept these monthly installments of principal and interest Midwest Federal by one of its lawyers, Rollin F. West, who also happens to be a member of the Board of Directors of the Defendant Midwest Federal and who is assumed to be a salaried employee of that company, commenced an action of foreclosure upon the Rev. Scarrella's homestead and Mr. West appeared at the Ramsey County Sheriff's sale on December 2, 1975, to purchase for the lender and act as a real estate agent for a federally chartered association. At this sale lawyer Mr. West absolutely refused to furnish a verified itemized statement of the redemption price as required by Minnesota Statutes, M.S. 580.09. Since the defendant, Midwest Federal, and their lawyer, Mr. West, refused to disclose the amount of the balance due for redemption on this mortgage; they were attempting to STEAL this property under color of state law, and by use of the state courts.

Plaintiff, Rev. Scarrella, attempted to obtain information regarding an itemized statement of default or due and owning for redemption charges; none came, then Rev. Scarrella commenced an action before the December 2, 1975, sale, File no. 408457, captioned:

IN THE MATTER OF, Mortgage Foreclosure Sale on the Tract of Land, describ-

ed to wit: Lots 4 and 5, Block 39 "Summit Park addition to St. Paul", in the County of Ramsey, State of Minnesota, which was filed in the Ramsey County District Court tc vacate the sheriff's sale and find out why Mr. West failed to comply with M.S. 580.09.

At this hearing before State District Judge Jerome J. Plunkett, Rev. Scarrella challenged the constitutionality of M.S. 580.06, which allows a county sheriff to sell real estate in a foreclosure, when judicial questions are raised by the mortgagor as to a verified itemized statement of the balance due on a mortgage. The sheriff's representative could not force the lawyer to comply with state statute and essentially the lawyer controlled this "sale" since the sheriff's officer lacked judicial powers of contempt to require compliance, therefore, the sheriff's sale (M.S. 580.06) is unconstitutional because it is a denial of due process and equal treatment clauses of the 14th Amendment. Judge Plunkett was adament in his refusal to consider the question of constitutionality of a state statute, and Mr. Jeffery Watson of the same law firm as Mr. West, which is Thompson, Hessian, Fletcher, McKasy & Soderberg, also representing the defendant-lender, said in his argument that his position was that the state court did not have jurisdiction of this case. When a state court judge refuses to determine the constitutionality of a state statute, then it is only proper for the federal courts to do so. At the end of the hearing when Rev. Scarrella was preparing to leave the court room, Mr. Watson boldly went into the judges chambers, like they owned the taxpayers' property.

In Ex parte Virginia,100 U.S. 399, it was stated, " The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function. When a judge acts intentionally and knowingly to deprive a person of his constitutional rights, he exercises no discretion or individual judgment; he acts no longer as a judge but as a "minister" of his own prejudices." Due process of law and equal protection of the laws are guaranted not only to citizens but to any persons. Gordon vs. Garrson, D.C. Ill. 1948, 77F. Supp. 477.

The right to use and occupy real estate as a home is a civil right guaranteed and protected by the constitution and laws of the United States, the power of the states to create and enforce property interests must be exercised within the boundary defined by the Fourteenth Amendment. Where the action of a state clearly violates the terms of the Federal Constitution, it is the duty of the Supreme Court of the United States so to declare. Shelley v. Kraemer §334 U.S. 1, 92 L ed. (Adv 845), 68 S.Ct. 836, 3ALR 2d 442 (1948).

Plaintiffs numerous inquiries to the clerk's office of U.S. District Court to learn which judge had been assigned to the hearing at 8:45 a.m. on October 21, 1975, and the clerk either didn't know or were under orders not to say, because plaintiffs did not learn from someone at the clerk's office until 8:15 a.m. (30 minutes before) the hearing that Judge Earl R. Larson had decided to hear this action, even

though #9 of the complaint states that he had been sued for $5 million by two of the plaintiffs in this action, Rev. Scarrella and Rev. Bullock. So, Rev. Scarrella asked the clerk to notify Judge Larson that she would be about 30 minutes late and she prepared an Affidavit of Prejudice against Judge Larson. Plaintiffs arrived in the courtroom shortly after 9:00 a.m. and only a couple of minor court employees were there. The plaintffs went to Judge Larson's office and he informed them that the hearing had already taken place, where upon he was served with an Affidavit of Prejudice. Judge Larson would not and did not issue an Order until after plaintiffs filed notice of appeal of whatever went on in that court-room that morning.

Upon inquiry Rev. Scarrella was informed that no record was made for that morning with regards to that case.

Because of the anti-non lawyer attitude of the judges of the 8th Circuit Court of Appeals experience by litigants and members of a civil rights reform group, it was felt that they (the judges) could not render a fair and impartial decision, consequently and Affidavits of Prejudice was served upon them (Judges of Appellete Court), and we, plaintiffs, decided to submit the record to the Hon. Tom Clark in the hope that he could hear this action. However, he politely informed us that he could not hear a case until it was assigned to him.

With reference to the Order filed June 8, 1976, by Judges Heaney, Bright and Ross of the Eighth Circuit Court of

Appeals No. 75-1912, it should be noted that this was not issued until soon after plaintiffs learned that retired Justice Tom Clark would not be hearing this matter and they (plaintiffs) filed notice of appeal and served Affidavits of Prejudices upon Justices Burger and Blackmun, in another case which probably put these judges to work. Their Order is in error in that the mortgagee agreement does not require escrow accounts for insurance and taxes. It should be noted that there was no need for the escrow accounts since insurance and taxes were pre-paid already by Rev. Scarrella

As for their reference to "Reverend Sharon Scarrella, a self-ordained minister of the Church of Justice Reform, Inc." is unsubstantiated and without foundation, whatsoever. If they (Judges) think they're mind readers, They are tuned in on the wrong channel.

It should be further noted that in this action all papers are prepared and agreed upon by all plaintiffs even th-ough Rev. Scarrella's signature appears thereon, and she is not acting in any way or fashion as a lawyer for anyone (we detest the implication of shyster), but we have rights under the 1st Amendment to exchange and exercise religious advice and rights which might have legal ramifications in one way or another.

The matter of Rev. Scarrella's Affidavit of Prejudice against Judge Larson was prepared just prior to knowledge that he (Judge Larson) was going to preside at the hearing on Oct. 21, 1975. And we take exception to the appellate court's ruling that a judge

can hear a case even though one of the parties appearing before him had sued him (the judge). It is convenient that these judges use one of their own decisions (Wounded Knee Legal Defense/Offense Committee v. F.B.I., 507 F.2d 1281, 1285 (8th Cir. 1974) to support much of their order in this case. That's what we are objecting to lawyers on the public payroll doing their own thing for other lawyers at the taxpayers expense.

That the constitutionality is clear where the statutory scheme of this subchapter (15§1601), is within the power granted to Congress under U.S.C.A. Const. Art.1 §8.Cl.3. Littlefield v. Walt Flanagan & Co., C.A. Colo. 1974, 498 F. 2d 1133. The matter of escrow accounts for insurance & taxes were provided for, however, the Truth in Lending Act did not prohibit the borrower from prepaying insurance, but in fact, required lenders to inform their customers that the selection of an insurance company for risk coverage was entirely up to the borrower. The prepayment of real estate taxes eliminated an escrow account for that purpose which was consistant with the purpose behind this subchapter (15 U.S.C.§1601) is to inform consumers not only of true cost of credit, but also of nature of terms of credit offered to them, which includes a description of the components of the finance charge; and is remedial in nature and in order that its important goal of providing consumers with much needed credit information be furthered, its terms should be construed liberally. Meyers v. Clearview Dodge Sales, Inc., D.C. La. 1974, 384 F.Supp. 722. The crucial objective of this subchapter (15 Titles§1601) is to insure

that consumers be afforded access to information so they can compare the cost of credit. Zeltzer v. Carte Blanche Corp., C.A. Pa. 1975, 514 F. 2d.1156. Truth in Lending Act reflects a transition in congressional policy from a philosophy of let-the-buyer-beware to one of let-the-seller-disclose. Truth in Lending Act §102 et seq., 15U.S.C.A. § 1601 et seq. Allen v. Beneficial Fiance Co., D.C. Ind. 1975, 303 F. Supp. 1383.

RULE 23. F.R.C.P.

Where Lawyer Harms(Thomes E.) attempts to say that Rev. Scarrella and Rev. Bullock are "self-ordained" is without foundation, nor correct, just as it would be to say that lawyer Harms got his law degree out of a Cracker-Jack Box. As for Rule 23 F.R.C.P. Class Actions. Because (a),1,2,3,4,and(b) 1,2,3. Rev. Scarrella position is clear, in this action. and Rev. Bullock's religious relationship with the Church of Justice Reform, Inc. and its location at 1058 Summit Ave. St. Paul, Minn., and Albert Brisson formerly had a mortgage with Midwest Federal, and he also appeared as a witness in a congressional inquiry about mortgages and escrow accounts.

Because of the abuses in the handling of this matter, this chapter is designed to prevent unscrupulous and pedatory creditor practices, is remedial and must be liberally construed to effectuate intent of Congress. Littlefield v. Walt Flanagan & Co., C.A. Colo. 1974 498 F. 2d. 1133.

Exhaustion of state remedies is not required under this section (42 U.S.C. §1983). Haakenson vs. Parkhouse, D.C. Pa. 1970, 312 F. Supp. 929, and it has been maintained that federal court has jurisdiction on basis of both general federal question jurisdiction and specific federal jurisdiction over cases seeking relief for specified federal wrongs. Penny vs. Municipal Court of Cherry Hill, Cherry Tp., State of N.J., D.C. N.J. 1970, 312 F. Supp. 938.

REASONS FOR GRANTING WRIT

The petitioners maintain that their right to a fair and impartial trial; equal protection under the laws and to due process clauses were violated in the state and federal courts. That the district and Appellate Courts errored in their findings. That the classification of the requirement for escrow accounts and interest paid thereon should be determined, and the constitionality of M.S. 580.06 should be determined so that the law as far as the redemption amount can be enforced either by cloaking the sheriff's representative with powers for punishment of contempt of court, or conducting the sale by a judicial officer.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/s/ Rev. Sharon L. Scarrella
REV. SHARON L. SCARRELLA
Attorney Pro Se
1058 Summit Avenue
St. Paul, Minnesota,55105
Tel.no.(612) 225-2861

/s/ Rev.Richard W. Bullock
REV.RICHARD W. BULLOCK
Attorney Pro Se
P.O. Box 262
Somerset, Wisc.54025

/s/ Albert Brisson Sr.
ALBERT BRISSON SR.
Attorney Pro Se
691 E. Third St.
St. Paul, Minn.55102

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CIV. NO. ———
CLASS ACTION

REV. SHARON L. SCARRELLA, REV. RICHARD W. BULLOCK, ALBERT BRISSON, and all others situated similarly,

Plaintiffs,

vs.

MIDWEST FEDERAL SAVINGS AND LOAN, R. E. VAN HORN, as an individual, K. G. BOOTH, as an individual, and their agents, assigns, successors, representative, those acting in concert with them, and all others similarly situated,

Defendants.

CIV. 4-75-457

Plaintiffs, for their cause of action herein state and allege:

JURISDICTION

1. That this case, in law and equity, arising under the Constitution of the United States, the laws of the United States, Magna Charta and the Constitution and laws of Minnesota. Title 28 U.S. Code Sections 1331, 1343, 1344, 1441 (a), (b), and (c)1443 (1)&(2), 2201, 2202, 2281-2284, and relief authorized by 42 U.S. Code Section 1981 through 1995. 15 U.S. Code Sections 1 through 28, commonly known as the Sherman

Anti-Trust Act and the Clayton Anti-Trust Act, 15 U.S.C. 1601-through 1681, Rule 23., and The Fourteenth Amendment of the Federal Constitution.

That the amount in controversy exceeds $10,000.00.

PARTIES

2. The Plaintiffs are citizens of the State of Minnesota who are keenly interested in the impartial administration of justice; and believe that all citizens have a constitutional right to trial by jury on all cases, and that the principles set down in the Declaration of Independence and Constitution of the United States shall be interpretted [sic] and applied by the individual citizens.

3. That the Plaintiffs are tax-payers [sic] and consumer advocates of all citizens of this state and are desirous of exposing to the general public the outrageous and confistory [sic] real estate tax situation which is being perpetuated [sic] upon the citizens of this state.

4. Further that the Plaintiffs are desirous of exposing the "banking interests" of their peculiar practice and hazy activities of holding money in what they call an escrow account, which are essentially liquid assets (money) that doesn't belong to them which is available for their business of making loans which earn for these financial institutions large sums of monies at the pecuniary gain for these institutions, but at the detriment and expense of the average middle class citizens, who are being ripped off, for years.

5. Plaintiffs are suing as a class to prevent a grave immediate and irreparable injury to themselves and others similarly situated by enforcement of the provisions in question.

6. Plaintiff, Rev. Sharon L. Scarrella, is the mortgagor, purchasing the property located at 1058 Summit Ave., St. Paul, Minnesota, 55105, who is also a consumer advocate and taxpayer.

7. Plaintiff, Rev. Richard W. Bullock, is a tax-payer [sic] and a consumer advocate.

8. Plaintiff, Albert Brisson, is Ramsey County Chairman of the Minnesota (T)-Party and is a taxpayer and consumer advocate.

9. Defendant Midwest Federal Savings and Loan Association located at 801 Nicollet Mall, Mpls., Minn. 55402 and is apparently chartered by the federal government and is doing business in the State of Minnesota. It is the mortgagee of that certain first mortgage upon the property located at 1058 Summit Avenue, St. Paul, Minnesota 55105.

10. Defendant, R. E. Van Horn, is apparently employed as one of the Assistant Vice President of the Midwest Federal Savings and Loan Association with the Mortgage service department.

11. Defendant, K. G. Booth, is apparently employed as a collection supervisor in the mortgage service department of the Midwest Federal Savings and Loan Association.

THREE JUDGE COURT

12. Plaintiffs respectfully request that a three judge court (who are not now nor have ever been members of the Minnesota State Bar Association and/or the American Bar Association), be convened as provided in 28 U.S. Code §2281-2284, in that plaintiffs seek to enjoin the enforcement of a state statue [sic] on the grounds of the unconstitutionality thereof by, restraining the actions of individuals and officers of such state in the enforcement of such statute.

CLASS ACTION

13. The plaintiffs herein bring this action on behalf of themselves and all other persons similarly situated, pursuant to Rule 23 (a)&(b) of the Federal Rules of Civil Procedures. The Plaintiffs are representative of and sue on behalf of all

taxpayers and mortgagors who want to inform all real-estate taxpayers of the astronomical expense of running our government and also, to prevent the banking and financial interests from collecting from mortgagors supposedly for prepaid taxxes [sic] and insurance (escrow) funds for which they (the mortgagee) fail to pay interest due to the mortgagor.

14. The Loan (Mortgage) for the purchase of the homestad [sic] at 1058 Summit Ave. St. Paul, Mn. 55105 (Ramsey County), was executed on May 18, 1973, by Shairley R. Hanson Assistant Vice President, for Midwest Federal Savings and Loan Association (hereafter referred to as mortgagee), on the *DISCLOSURE CONV.—FORM A, NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW, FEDERAL RESERVE REGULATION Z, (Exhibit "A")*, and was completed by plaintiff, Sharon L. Scarrella (hereafter referred to as mortgagor), on May 23, 1973, indicating,

"Payments for principal and interest on this transaction shall be 300 monthly installments of $232.65* beginning on the 30th day of July, 1973 and due on the 30th day of each month thereafter."

Footnote "*Including escrow payments for taxes and hazard insurance premium, monthly installment payments for the coming year will be approximately $301.00."

"Property insurance, if written in connection with this loan, may be obtained by borrower through any person of his choice, provided however, the creditor reserves the right to refuse for reasonable cause, to accept the insurer offered by the borrower. If borrower desires property insurance to be obtained from or through the creditor, the cost will be $ . . . for the first year term of the initial policy."

"Credit life, accident, health or loss of income insurance is not required to obtain this loan. No charge is made for such insurance and no such insurance is provided unless the borrower signs the appropriate statement below. is available at a cost of $ for the year of the initial policy."

I DO NOT desire such insurance coverage.

May 23/73 Sharon Scarrella

15. U.S.C.A. Section 1605.

(c) Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance is obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through wich [sic] the insurance is to be obtained.

Items exempted from computation of finance charge in all credit transactions.

(d) If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(3) Taxes

Items exempt from computation of finance charge in extensions of credit secured by interest in real propeerty [sic]

(e) The following items, when charged in connection with any extention of credit secured by an interest in real

property, shall not be included in the computation of the finance charge with respect to that transaction:

(3) Escrows for future payments of taxes and Insurance.

THEREFORE, since this pays [sic] for Escrows for taxes and insurance on the real property are excluded and in the case of insurance require a signature by the mortgagor indicating to accept reject their offer of insurance coverage. Mortgagor did select to obtain insurance with another company other than with mortgagee. Regulation "Z" does not imply that insurance or taxes, to be included with the Loan principle [sic] and interest payment, however on the contrary it takes the direct opposite stand.

16. That Mortgagor (Ms. Scarrella) made her selection and purchased insurance on the real property by prepaying $109.35 to the Peoples Insurance Agency, Mora, Minnesota, for the year through May 30, 1974.

17. That inspite [sic] of (mortgagors) selection to independently purchase the insurance elswhere, which she did, Defendant, mortgagees proceeded to charge her for insurance by adding an additional amount on to the principal and interest payment to provide for insurance in an escrow account in direct violation of Regulation "Z", 15 U.S.C. §1605.

18. That on May 31, 1973, the Mortgage Deed (Exhibit "B") and First Mortgage Note (Exhibit "C") were executed and filed with the Washington County Registor [sic] of Deeds office on August 30, 1973 on real estate located in Ramsey County.

19. That Plaintiff, mortgagor, has fully complied with the mortgage deed and mortgage note, pursuant to 15 U.S.C. §1605.

20. That on May 30, 1975 Plaintiff, Mortgagor, made her monthly installment payment of Two-Hundred-Thirty-Two

and 65/100 Dollars ($232.65), Principle [sic] and interest which was accepted in her check No. 362 (Ex. "D"), which was creditied [sic] to her account 732-1234475.

21. That Plaintiff, mortgagor, submitted her letter dated July 1, 1975 (Exhibit E) along with her check No. 203 in the amount of One-Hundred-Forty-Two and no/100 Dollars ($142.00) (Exhibit "E") which added to the ninety and 65/100 Dollars ($90.65) the remainder in the escrow account per your statement of June 1, 1975, also reflecting,

"5/15 HALF-YR-TX-DISB	$439.95
"5/16 FIRE-INS-PREM	$270.53
PRINCIPAL BALANCE	$30,005.31

and Plaintiff, mortgagor, notified Defendant, mortgagee, that in the future she would pay her insurance company directly and her property taxes would be paid directly, thereby eliminating the need for the escrow accounts, and that plaintiff mortgagor would hereafter pay the previously contracted payment of Principle [sic] and Interest in the amount of Two Hundred Thirty-Two and 65/100 ($232.65).

22. That Defendant, mortgagee's letter of July 14, 1975 (Exhibit "F") in which Defendant refused mortgagor's check No. 203 dated July 1, 1975, the June principal and interest payment less the $90.65 which was the remainder in the escrow account.

23. That Plaintiff, mortgagor, received on July 25, 1975 (Exhibit "G), "FINAL NOTICE BEFORE LEGAL PROCEEDINGS", Form 283, threatening to start legal proceedings against her with in [sic] six (6) days, and apparently signed by Defendant K. G. Booth.

24. That on July 30, 1975, Plaintiff, mortgagor, sent a letter (Exhibit "H") indicating that defendant, mortgagee, was holding Plaintiffs monies in this escrow funds without paying interest at the legal rate of eight (8) per cent. This communication also reiterated that Plaintiff had selected to discontinue the escrow accounts and obtain her own insurance and to pay the taxes herself. In addition Plaintiff enclosed notice that she was paying only the Principle [sic] and Interest payment of $232.65, since May 30, 1975.

25. That on August 5, 1975, Defendant R. E. Van Horn wrote a letter (Exhibit "I") in which he refused to accept the Plaintiff's, mortgagor's, payments of Principal and Interest and he returned Plaintiffs checks as follows:

Check No. 203 dated July 1, 1975 for Principal and Interest pymt. $142.00

Check No. 206 dated July 30, 1975, P & I, July 30, 1975 pymt. $232.65

Further, Defendant failed to note the specific section's of the contractual agreement which requires Plaintiff to pre-pay any money unless she receives interest on that money.

26. That Plaintiff, mortgagor letter on August 6, 1975 (Exhibit "J") requested copies of the contracts and informing the Defendant mortgagee, that her payments of principal and interest which are refused by Defendant, mortgagee, would be deposited in a separate account until the final determination of this action.

27. That on August 6, 1975, Defendant mortgagee R.E. Van Horn's letter (Exhibit "K") furnished copies of the Mortgage Deed and the First Mortgage Note, as herein before noted as Ex. B & D.

28. That Plaintiff, mortgagor, tendered her check No. 214 dated August 12, 1975. The august 30th pymt. in the amount of $232.65, the Principal and Interest and received a receipt from the Defendant "Midwest Federal Savings", authorized representative stamped "Grand 462", (Exhibit "L").

29. That Defendant, mortgagee K. G. Booth's letter dtd. August 18, 1975, (Exhibit "M"), in which Defendant, refused payment on the August 30, 1975, payment of P & I and returned Plaintiffs mortgagor's check no. 214.

30. That on August 21, 1975, Plaintiff, mortgagor, tendered her check No. 382, dated August 21, 1975, for the Sept., 30th pymt in the amount of $232.65, for P&I, to Defendant, mortgagee, and received Loan payment Receipt from the Midwest Federal Savings and Loan Association indicating stamp "Midway 281", by their authorized employee (Exhibit "N").

31. That on August 22, 1975, Plaintiff, mortgagor, tendered her check No. 220 dtd. August 22, 1973, for the October 30th pymt. in the amount of $232.65 for P&I to Defendant mortgagee, and received Loan Payment Receipt from the Midwest Federal Savings Loan Association indicating the stamp "Rosedale 363" by their authorized employee (Exhibit "O").

32. That on August 22, 1975, (Exhibit "P"), Plaintiff, mortgagor's requested an amortisation [sic] schedule from Def. Mortgagee.

33. That on August 27, 1975, Defendant R. E. Van Horn's letter (Exhibit "Q") refuses and returned Plaintiffs' mortgagor's checks No. 382 in the amount of $232.65, and her check No. 220; in the amount of $232.65. Then Defendant mortgagee, notifies Plaintiff "Your account has been given to our attorney for foreclosure.

34. That Plaintiff, mortgagor, is the owner of another parcal of real estate in the State of Minnesota which has a mortgage Deed with the Defendant, mortgagee, Midwest Federal Savings and Loan Association, Loan No. 32-011736-3 upon which Plaintiff has been paying monthly installments of Principle [sic] and Interest, in the amount of Seventy-Two and 22/100 Dollars ($72.22), and Plaintiff *does not* pay advance sums of money for escrow for insurance and interest, (Exhibit "R").

35. That Defendants have refused to accept loan payments from Plaintiff mortgagor, and have acted under color of law attempting to coerce plaintiff, (mortgagor), into paying her money into "funds" which they have used for the past two years without paying any interest whatsoever, and further, the Defendants, individually and jointly, have and are acting under color of law to coerce Plaintiff Mortgagor into extortion of these funds by deceit, creating a breach of contract, restraint of trade, in violation of Plaintiffs federal civil Rights.

36. That because of this Tight economic condition in this country the defendants, mortgagee and their agents are and have been negligent and misrepresented the agreements to plaintiff and have and are continuing to extort huge sums of monies from the citizens of Minnesota, thereby creating a public nuisance in violation of the federal constitutional rights of our citizens.

WHEREFORE, the Plaintiffs demand and pray:

1. That the Court issue a preliminary injunction against defendants prohibiting and enjoining them from,

a.) requiring Plaintiff (mortgagor), to pay any monies into insurance and tax escrow funds,

b.) refusing to accept Plaintiffs mortgagor's monthly installments payments of principle [sic] and interest in the amount of Two Hundred, Thirty-Two and 65/100 Dollars ($232.65).

c.) attempting to circumvent the jurisdiction of this court.

d.) requiring other citizens from paying only the principal and interest on their loans.

e.) failure to pay interest at the rate of eight (8) per cent on all escrow funds to all mortgagors.

pending determination of this suit and until further order of this Court.

2. That the Court issue an order requiring the Defendants to account for all monies and other considerations received by them for all escrow funds.

3. That the Plaintiffs, in their own right and as representative of the Class hereinbefore mentioned, be awarded damages in the amount of Thirty Million Dollars ($30,000,000.00) against defendants, jointly and severally for unpaid interest payment due.

4. That the Plaintiffs in their own right and as representatives of the Class hereinbefore mentioned, be awarded damages in the amount of Twenty-Five Thousand Dollars ($25,000.00) against Defendant R. E. Van Horn, and Twenty-Five Thousand Dollars ($25,000.00) against Defendant K. G. Booth, jointly and severally.

5. That this Court issue a permanent injunction prohibiting and enjoining the defendants from requiring mortgagors from paying into escrow funds, and whenever an escrow fund is held by the defendant that they shall pay interest in the amount of 8% to the mortgagor.

6. That awarding to Plaintiffs of Attorneys fees, costs and expenses. The reasonable amount of which should be set by the Jury up to $20,000,00.

7. That this Court grant and award such other and further relief at law and equity as the Court may deem appropriate and proper.

8. Plaintiffs demand a trial by a Jury of 12 with the Jury determining the law and fact.

9. That Plaintiffs, Rev. Sharon L. Scarrella and Rev. Richard W. Bullock, verily believe that any and all judges and hearing officers who are now or have ever been members of the Minnesota State Bar Association and the American Bar

Association should unequivocally disqualify themselves from hearing or presiding at any of the proceedings in this action because of personal bias, prejudice and interest because the above two plaintiffs joined other citizens, non-lawyers in a class action who filed suit against the Minnesota State Bar Association and the American Bar Associations in U.S. D. C. (Minn.) 3-74-Civ. 98, Captioned: Richard W. Bullock, Sharon L. Scarrella, Frank D. Bilotte, and David Dotlich, and all others situated similarly, Plaintiffs, vs. Edward J. Devitt, Miles W. Lord, Earl R. Larson, Dennis F. Donovan, and Gunnar H. Nordbye, individually and as federal district judges in the state of Minnesota, Minnesota State Bar Association, and American Bar Association, Warren Spannus [sic] State Judge Schultz, their agents, assigns, successors, representative, those acting in concert with them, and all others similarly situated, Defendants.

The two plaintiffs verily believe that because of that action they cannot and will not receive a fair and impartial trial from any member or affiliate of those organizations.

REV. SHARON L. SCARRELLA
Attorney Pro Se
1058 Summit Avenue
St. Paul, Minnesota 55105
Tel. No. (612) 225-2861

REV. RICHARD W. BULLOCK
Attorney Pro Se
P. O. Box 262
Somerset, Wisc. 54025

ALBERT BRISSON
Attorney Pro Se
2637 Stillwater Rd.
St. Paul, Minnesota

APPENDIX II

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 75-1912

REV. SHARON L. SCARRELLA, REV. RICHARD W. BULLOCK and ALBERT BRISSON, and all others similarly situated,

Appellants.

vs.

MIDWEST FEDERAL SAVINGS AND LOAN ASSOCIATION OF MINNEAPOLIS, R. E. VAN HORN, as an individual, K. G. BOOTH, as an individual, and their agents, assigns, successors, representatives, those acting in concert with them, and all other similarly situated,

Appellees.

ORDER

Defendants noticed various motions for hearing on October 21, 1975, at 8:45 A.M. Notices were served on the three pro se plaintiffs by mail on September 26, 1975. Plaintiffs had not appeared by 9:00 A.M. and the Court heard counsel for defendants. One or more of plaintiffs reported to the Court's Chambers at 9:20 A.M. Failure to appear at the noticed time is inexcusable. Costs have been imposed on attorneys for failure to appear. At 9:32 A.M. plaintiff Scarrella filed an affi-

davit stating that she is one of plaintiffs who sued the Judges in this District in another case, and that she cannot receive a fair trial from Judges Devitt, Larson, Lord and Alsop, the four active judges in the District of Minnesota.

Plaintiffs appear to make claims under the Civil Rights Act and the antitrust laws. No facts are pleaded to support these claims. Claim is also made under the Truth in Lending Act. There is no basis for this claim. *Umdenstock v. American Mortgage Investment Co.*, 495 F.2d 589 (10 Cir. 1974).

Two of the plaintiffs, Bullock and Brisson, allege no relationship to the particular facts of this case and have no standing to sue individually or as class representatives and will be dismissed upon further hearing as plaintiffs.

The claim appears to involve a claim of interest in escrow accounts. This is purely a State Court and not a Federal Court matter. If the claim is worth pursuing, a complaint should be filed in State Court.

IT IS ORDERED:

1. That the motion to dismiss the Truth in Lending claim be considered again at the next hearing.

2. That plaintiffs Bullock and Brisson be dismissed as plaintiffs.

3. That plaintiff Scarrella file an Amended Complaint within 20 days, setting out the factual basis for the Civil Rights and Antitrust claims.

November 21, 1975.

EARL R. LARSON
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 75-1912

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Appellees.

(Filed: June 8, 1976.

Before HEANEY, BRIGHTand ROSS, Circuit Judges

ORDER

The appellants in this action are the Reverend Sharon Scarrella, a self-ordained minister of the Church of Justice Reform,Inc., the Rev. Richard Bullock, and Albert Brisson. They appeal an interlocutory order of the district court[1] dismissing appellants Bullock and Brisson as plaintiffs in the action pending below.[2] Additionally, appellants Scarrella and Bullock have filed a motion requesting all of the judges of this court to disqualify themselves.

We deny the motion for disqualification and dismiss the appeal for lack of jurisdiction.

1. U.S.D.C. (Minn.) Judge Larson.

I. Motion for Disqualification.

The grounds alleged by appellants for disqualification of the members of this court are (1)that the members of this court are involved with or are members of, the Minnesota State Bar Association and the American Bar Association, both of which were defendants in a separate class action suit brought by the appellants and (2) that the members of this court have a "unique relationship" with the members of the legal profession and the financial interests in the state of Minnesota and as such cannot render a fair and impartial decision. Such vague allegations of prejudice are insufficient to require disqualification of any member of this court. 28 U.S.C.§ 455. See Wounded Knee Legal Defense/Offense Committee v. F.B.I., 507 F.2d 1281,1285 (8thCir. 1974).

II. Jurisdiction.

Rule 11 of the Federal Rules of Civil Procedure requires that every pleading be signed by the party filing it, or by that party's attorney. Here the notice of appeal, which was purported to be on behalf of all appellants was signed only by appellant Scarrella, who is not an attorney. Since appellants Bullock and Brisson did not sign the notice of appeal, their appeals must be dismissed. McKinney v. DeBord, 507 f.2d 501 (9th Cir. 1974); cf. Huffman v. Nebraska Bureau of Vital Statistics, 320 F. Supp. 154 (D. Neb. 1970). As the court

2, Allegations of the complaint filed arose out of a mortgagor-mortgagee between appellant Scarrella and appellee Midwest Federal. The mortgage agreement required at option

in Huffman stated in applying FED.R.CIV. P. 11 in an analogous situation.

> * * *one of the justifications * * *of Rule 11 is to make certain that the persons who are named as parties are actually in assent to the filing of an action on their behalf * * *.

Id. at 156.

Assuming the order as to Brisson and Bullock to be appealable, we do not by dismissing their appeal prejudice their right to appeal the order upon entry of final judgment by the district court. A party is not required to take an interlocutory appeal authorized by statute. A & R Realty Co. v. Northwestern Mutual Life Insurance Co., 95 F. 2d 703, 707 (8th Cir. 1938); Caradelis v. Refineria Panama, S.A., 384 F.2d 589, 591 (5th Cir. 1967); Victor Talking Mach. Co. v. George, 105 F.2d 697, 699 (3d Cir.), cert denied, 308 U.S. 611 (1939); 9 MOORE'S FEDERAL PRACTICE § 110.18 at 205-206 (1975).

We also dismiss the appeal as to appellant Scarrella.

The order dismissing plaintiffs Bullock and Brisson did not resolve the rights and liabilities of all parties. Since the district court did not render "an express determination that there is no just reason for delay" and "an express direction for the entry of judgment, pursuant to FED. R. CIV. P. 54(b), the order is not a final decision within the meaning of 28 U.S.C. §1291 and there

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of Midwest to pay an escrow on a monthly basis 1/12estimated for taxes and insurance. Scarrella declined to pay into the escrow account, and Midwest instituted

fore nonappealable unless of a type permitted interlocutory review by statute. McNally v. Pulitzer Publishing Co., ___ F.2d ___ (8th Cir. 1976) (March 5, 1976, No. 75-1295); Lane v. Graves, 518 F.2d 965 (8th Cir. 1975); Wooten v. First National Bank, 490 F. 2d 1275 (8th Cir. 1974).

The only possible source of jurisdiction here is 28 U.S.C. §1292(a) (1), which extends appellate jurisdiction to "interlocutory orders of the district courts * * * granting, * * * refusing or dissolving injunctions * * *." It is true that plaintiffs are seeking injunctive relief. However, where an order dismisses fewer than all plaintiffs or defendants, the test to determine whether that order is one granting or denying injunctive relief is essentially whether the order contracts the scope of the injunctive relief originally sought. Build of Buffalo, Inc. v. Sedita, 441 F. 2d 284 (2d Cir. 1971); Yaffe v. Powers, 454 F. 2d 1362, 1364-1365 (1st Cir. 1972). Whatever the merits of an argument that as to Bullock and Brisson the scope of injunctive relief has been contracted, it is clear that as to appellant Scarrella the full measure of injunctive relief sought is still available. Therefore, her appeal must be dismissed.

Finally, we note that appellant Scarrella complains of the failure of the district judge to disqualify himself. A deter-

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foreclosure. Appellants in their complaint sought to establish a class action as "taxpayers and consumer advocates" to aid in "exposing to the

mination by a district judge not to disqualify himself is reviewable by appeal only from a final judgment in the cause in which the motion for disqualification was filed. Dubnoff v. Goldstein, 385 F. 2d 717 (2d Cir. 1967); Albert v. U.S. D. C. for the W.D. of Michigan, 283 F. 2d 61 (6th Cir. 1960), cert. denied, 365 U.S. 828 (1961). However, we have held that such a determination is reviewable by a petition for a writ of mandamus, and we treat Scarrella's allegation on appeal as such a petition. Pfizer Inc. v. Lord, 456 F. 2d 532 (8th Cir.) cert. denied, 406 U.S. 976 (1972).

Scarrella alleges that disqualification is required because the judge had been a defendant in a separate action brought by two of the three appellants against all of the federal district judges of the District of Minnesota. Scarrella also alleges that the district judge, in 1959, while chairman of the Minnesota Human Rights Commission, "urged others to prevent a U.S. citizen to speak just because he * * * didn"t agree with the speaker's views." This claim were made in an affidavit of prejudice filed on October 21, 1975, the same day on which the district judge held a hearing on the matters giving rise to this appeal.

We hold that the district judge did not abuse his discretion in refusing to disqualify himself. The allegations of bias as set forth in the affidavit were legally insufficient to require his

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general public the outrageous and confistory real estate tax situation which is being perpetrated upon the citizens ofthe state" and in exposing Minn. banks

disqualification. We have previously held that the fact that a party has in the past attempted to initiate unrelated judicial proceedings against the court is insufficient in and of itself to establish bias. Hodgdon v. United States, 365 F.2d 679 (8th Cir. 1966), cert. denied, 385 U.S. 1029 (1967). Appellant failed in her affidavit to allege sufficient factual details establishing personal bias toward her on the part of the district judge. Wounded Knee Legal Defense/Offense Committee v. F.B.I., supra, at 1285-1286. Further the affidavit of bias was untimely filed, and no just cause for delay appears in the record. 28 U.S.C. § 144. Wounded Knee Legal Defense/Offense Committee v. F.B.I., supra, at 1286.

The appeal is dismissed, and the petition for a writ of mandamus is denied.

A true copy.
Attest:
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

"hazy activities" of holding money in escrow to pay taxes and insurance, without paying interest on escrow funds. Appellants sought injunctive relief and damages.)